

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 930 of 1982

Date of decision: 3-2-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RABARI KARSHANBHAI BHURABHAI

Versus

RANA NARUBHA JILUBHA

Appearance:

MR A.D.Pithani for Petitioner

None present for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/02/97

ORAL JUDGEMENT

Heard the learned counsel for the petitioner.

By this special civil application the petitioner has challenged the order of the Appellate Authority under the Gujarat Debtors Relief Act, 1976, as well as the order of the Debts Settlement Officer, Surendranagar. Father of respondent No.1 - Shri Rana Jilubha Manubha executed a sale deed dated 17th April, 1970 in favour of the petitioner as Manager of Hindu Joint Family property, whereby he sold two agricultural fields - one admeasuring about 4.45 hectares and another admeasuring 2 acres 5 gunthas. Original executant of the sale deed has died after execution of the sale document. The son of original executant filed declaration under section 6(1) of the Gujarat Rural Debtors Relief Act, showing two statements in respect of every debt due by him on the appointed day. Notice was published under section 7(1)(ii) of the Act on 31st December, 1977 by the Talati-cum- Mantri. Notice under section 8(2) was also issued to the parties. In the evidence, respondent has admitted that he has 8 acres and 1 guntha of land in his possession. He has also stated that the said land was in the name of four brothers. The Debt Settlement Officer raised following points in his judgment:

(1) Whether Narubha Jilabha was a debtor under section 12(a) of the Act;

(2) Whether respondent No.1 was a small farmer ?

(3) Whether the liability is of a debtor or not ?

The Debt Settlement Officer, on the basis of the material on record, held that the respondent was not a small farmer and hence not accepted the declaration. Against the said order the respondent filed appeal which has been allowed. The Appellate Authority has recorded the finding that for the district of Surendranagar, the limit for small holders was of 24 Hectares and, therefore, he remanded the case to the Debt Settlement Officer to decide whether respondent No.1 was a small farmer or not and to decide other issues. On remand, evidence was further recorder and the Debt Settlement Officer held that respondent No.1, who was debtor, was a small farmer and the transaction of sale was a mortgage. Being aggrieved by the aforesaid order the petitioner filed appeal which came to be dismissed on 2nd January, 1982. Hence this petition.

2. The petitioner filed further affidavit today in the court. Learned counsel for the petitioner made manifold contentions challenging the order of the

authorities below. But I do not consider it necessary to advert to all the contentions raised by the learned counsel for the petitioner, as this petition deserves to be accepted on the ground that further investigation is required to be made in the matter on the averments made by the petitioner in the affidavit filed today in the court.

3. From the affidavit which has been filed by the petitioner, it transpires that Jilubha Manubha had in all 46 acres and 4 gunthas of land. Jilubha Manubha was the person from whom land was purchased by the petitioner. If partition has taken place, then the point which has not been considered was whether the successor to the vendor can take benefit of the provisions of the Act. Another point which needs consideration is that in case the land has been sold by the vendor as Karta of Hindu Undivided Family, then whether his successor can take all these points. In case the averments made in the affidavit are correct, then certainly respondent No.1 may not be a small farmer and the protection as given to such a class of persons under the Act may not be available to him. As I consider it proper to remand the case back for further inquiry, I do not think it proper to express any opinion on the merits of the matter.

4. In the result this special civil application succeeds. The order of the Debt Settlement Officer, Surendranagar, dated 28-10-1980 and the order dated 2-1-1982 passed by the Appellate Officer, in Appeal Case No.349 are quashed and set aside. The matter is remanded back to the Debt Settlement Officer for deciding the same afresh in accordance with law. The petitioner is at liberty to produce further evidence to show that the land being undivided property of Joint Hindu Family, etc., Rule made absolute in the aforesaid terms. No order as to costs.

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